

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 8, 10 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 6, 9 and 10 of copending Application No. 10/572833. Although the conflicting claims are not identical, they are not patentably distinct from each other because Application claim 1 and co-pending Application claim 1 are both drawn to the same invention, i.e., a system for monitoring a person health condition. Theses claims are commensurate in the scope and differ only in the way they were written. In the light of the claim, the "health care characteristic" in the co-pending application equates to the "vital signs" in the

instant application, and the "health care" in the co-pending application equates to the "sport care" in the instant application.

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made, to modify co-pending application's claim 1 by rewording the claim, to be like claim 1 in the instant application.

Allowance of application claim 1 would result in unjustified time-wise extension of the monopoly granted for the invention defined by co-pending application's claim 1. Therefore, Provisional obviousness-type double patenting is appropriate because the conflicting claims have not in fact been patented.

Application claim 2 corresponds to co-pending Application 3.

Application claim 3 corresponds to co-pending Application 2.

Application claim 8 corresponds to co-pending Application 6.

Application claim 10 corresponds to co-pending Application 9.

Application claim 11 corresponds to co-pending Application 10.

Claims 12, 16 and 17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11, 13, 16 and 19 of co-pending Application No. 10/572833. Although the conflicting claims are not identical, they are not patentably distinct from each other because

Application claim 12 with additional limitations, i.e., "measuring one or more vital..." claims all limitation of co-pending Application claims 11 and 13.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both the claims of instant application and the claims of copending Application No. 10/572833 are almost the same in scope although copending Application's claims omit some limitations in Application claim 12. Therefore, it would have been obvious to one of ordinary skill in the art to modify copending Application's claims with those additional limitations so to obtain application's claim 12 as claimed.

Allowance of application claim 12 would result in an unjustified time-wise extension of the monopoly granted for the invention defined by copending Application claims 11 and 13. Therefore, Provisional obviousness-type double patenting is appropriate because the conflicting claims have not in fact been patented.

Application claim 16 corresponds to copending Application claim 16.

Application claim 17 corresponds to copending Application claim 19.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 10, 12-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al US (2002/0022551) in view of Quy US (5,601,435).

Regarding claim 1, Watterson discloses, a system for sport care monitoring of a person (Fig. 1), the system comprising:

a computer (Fig. 1, el. 14; Paragraph 0092 and 0096) operatively connected to at least one display (Fig. 7, el. 166 and Paragraph 0099 and 00134) and speaker (Paragraph 0099, lines 23-25), the computer being further operatively connected to a first network (Fig. 1, el. 16)

one or more wireless sensors (Paragraph 0141, 0092, 0094, 0101 and 0115) for measuring one or more vital signs of the person (Paragraph 0141) and transmitting the same to the computer (Paragraph 0113, 0114 and 0141), the one or more wireless sensors being wirelessly connected to the computer (Paragraph 0092, 0094, 0101 and 0115; Watterson suggest using a wireless communication between the treadmill, computer and the communication system).

Watterson does not disclose a set-top-box and a television display.

Quy discloses a set-top box (Fig. 1, el. 16) connect to a television display (Fig. 1, el. 6) that receives a user's health information (Col. 4, lines 3-16 and 47-48).

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made to modify Watterson system to include a set-top-box and a TV screen, as suggested by Quy, instead of the computer, in order to allow the user to

receive a television signal, so the user this way can receive the user's health info by the set-top-box in a television signal and display the received information on the TV screen.

Regarding claim 2, Watterson in view of Quy discloses, communication mean (Fig. 7, el. 182) for operatively connecting a remote station (Watterson: Paragraph 0007 and 0008; the health club/home or any place where the treadmills "Fig.7, el. 12 and 20" are located) to the set-top-box (Quy: Fig. 1, el. 1) through the first network (Watterson: Fig.1 ,el. 16), wherein the one or more vital signs are transmitted from the set-top-box to the remote station via the first network (Watterson: Paragraph 0090, 0094 and 0114).

Regarding claim 3, Watterson in view of Quy discloses, the first network is the internet (Watterson: Paragraph 0100, lines 15-2, Fig. 1, el. 178 and Paragraph 0101, lines 7-10).

Regarding claim 4, Watterson in view of Quy discloses, the remote station is a location of a health club (Watterson: Paragraph 0007 and 0008).

Regarding claim 5, Watterson in view of Quy discloses, at least one sport equipment (Watterson: the treadmill; Fig. 1, el. 12a-n or 20a-n) operatively connected to the set-top-box via the remote station (the treadmill that is located in the remote station health club/home or any other place will be connected to the set-top-box through that remote station; also see Fig. 1) for transmitting performance characteristics from the at

least one sports equipment to the set-top-box (Watterson: Paragraph 0441 and 0064, lines 10-13).

Regarding claim 6, Watterson in view of Quay discloses, the set-top-box further having a memory for storing the transmitted performance characteristics (Watterson: Paragraph 0094, 0098 and 0064; the computer receive different data from the treadmill, including performance data of the treadmill and store theses data in the memory).

Regarding claim 7, Watterson in view of Quay discloses, the communication means (Fig. 1, el. 182) further transmits the performance characteristics to the remote station through the first network (Fig. 1, el. 178; the data "including performance characteristic" will be transmitted form the computer/set-top-box to the treadmill "Paragraph 0132, lines 2-5, Paragraph 0090, lines 7-13 and Paragraph 0114).

3. Claim 8-9, 11, 16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al US (2002/0022551) in view of Quay US (5,601,435) in view of David et al US (5,544,649).

Regarding claim 8, Watterson in view of Quay discloses, the set-top-box having a mean for contacting a medical professional (Watterson : Paragraph 0099; the computer/set-top-box is connected to a camera to enable a live communication/contact with the treadmill "paragraph 0104, lines 17-20" or a third party/medical provider "Fig. 10, el. 258, Paragraph 0165, lines 3-4 and Paragraph 0169").

Watterson in view of Quay does not disclose that contacting a medical professional is performed through a second network.

David et al discloses a system for monitoring the user's health (Fig.1), where the central computer (Fig. 5, el. 70) in central station (Fig. 5, el. 20) contact the physician office through a second network (Col. 9, lines 26-31).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made, to modify Watterson in view of Quay system to include a second network to contact the medical professional, as suggested by David in order to have a second network for communication between parties, so to have alternative way for communication in case the first network failed.

Regarding claim 9, Watterson in view of Quay in view of David discloses, the second network is a telephone network (David: Col. 11, lines 47-50).

Regarding claim 10, Watterson in view of Quay discloses, a first video camera operatively connected to the set-top-box (Watterson: Paragraph 0099, lines 9-10) for transmitting a video signal of the person to the remote station (Watterson: Paragraph 0114).

Regarding claim 11, Watterson in view of Quay discloses, a second video camera (Watterson: Fig. 6, el. 92) operatively connected to the remote station (Watterson: the video camera is connected to the control panel of the treadmill machine "Fig. 1, el. 12" in the remote station) for transmitting a video signal of one or more individuals at the

remote station (Watterson: Paragraph 0082; the user of one of the treadmill machine can have a video communication with the other users) to the set-top-box ( Watterson: Paragraph 0114).

Watterson in view of Quy does not expressly disclose, display the video signal of the individual at the remote station at the television display.

David discloses display the individual in the remote station on the television Display (Fig. 5, el. 88 and Col. 13, lines 39-40).

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made, to modify Watterson in view of QUY sport care monitoring system in order to display the individual on the TV screen as suggested buy David, so the user can view the individual on a bigger screen, since the TV screen is bigger in size than the computer's monitor

Regarding claim 12, Watterson discloses, method for sport care monitoring of a Person (Paragraph 0002), the method comprising:

operatively connecting a computer (Fig. 1, el. 14) to a speaker (Paragraph 0099, lines 23-25), a first network (Fig. 1, el. 16), a remote station (Paragraph 0007 and 0008; the health club/home or any place where the treadmills "Fig. 7, el. 12 and 20" are located) and

one or more wireless sensors (Paragraph 0141, 0092, 0094, 0101 and 0115; Watterson suggested using sensors that could be wired or wireless)

measuring one or more vital signs of the person with the one or more wireless

sensors (Paragraph 0141);

wirelessly transmitting the one or more vital signs from the one or more wireless sensors to the computer (Paragraph 0113, 0114 and 0141; also Watterson suggested wireless transmission of the vital signals Paragraph 0092, 0094, 0101 and 0115)

operatively connecting the remote station to the computer through the first network (Paragraph 0058 and Fig. 1) and

transmitting the one or more vital signs from the computer to the remote station via the first network (Paragraph 0090, 0094 and 0114).

Watterson does not disclose a set-top-box and a television display.

Quy discloses a set-top box (Fig. 1, el. 16) connect to a television display (Fig. 1, el. 6) that receives a user's health information (Col. 4, lines 3-16 and 47-48).

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made to modify Watterson system to include a set-top-box and a TV screen, as suggested by Quy, instead of the computer, in order to allow the user to receive a television signal, so the user this way can receive the user's health info by the set-top-box in a television signal and display the received information on the TV screen.

Regarding claim 13, Watterson in view of Quy discloses, the method comprising operatively connecting at least one sports equipment (Watterson: the treadmill; Fig. 1, el. 12a-n or 20a-n) to the set-top- box via the remote station (the treadmill that is located in the remote station health club/home or any other place will be connected to

the set-top-box through that remote station; also see Fig. 1); and

transmitting performance characteristics from the at least one sports equipment to the set-top-box (Watterson: Paragraph 0441 and 0064, lines 10-13).

Regarding claim 14, Watterson in view of Quy discloses, storing the transmitted performance characteristics in a memory operatively connected to the set-top-box (Watterson : paragraph 0094, 0098 and 0064; the computer receive different data from the treadmill, including performance data and store theses data in the memory).

Regarding claim 15, Watterson in view of Quy discloses, transmitting the performance characteristics to the remote station through the first network (Paragraph 0132, lines 2-5, Paragraph 0090, lines 7-13 and Paragraph 0114; also see Fig. 1, el. 178).

Regarding claim 16, Watterson in view of Quy discloses, contacting a medical professional from the set-top-box (Watterson : Paragraph 0099; the computer/set-top-box is connected to a camera to enable a live communication/contact with the treadmill "paragraph 0104, lines 17-20" or a third party/medical provider "Fig. 10, el. 258, Paragraph 0165, lines 3-4 and Paragraph 0169").

Watterson in view of Quy does not disclose that contacting a medical professional is performed through a second network.

David et al discloses, a system for monitoring the user's health (Fig.1), where the central computer (Fig. 5, el. 70) in central station (Fig. 5, el. 20) contact the physician office through a second network (Col. 9, lines 26-31).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made, to modify Watterson in view of Quy system to include a second network to contact the medical professional, as suggested by David in order to have a second network for communication between parties, so to have alternative way for communication in case the first network failed.

Regarding claim 17, Watterson in view of Quy discloses, comprising transmitting a video signal of the person to the remote station from a first video camera operatively connected to the set-top-box (Watterson: Watterson: Paragraph 0099, lines 9-10).

Regarding claim 18, Watterson in view of Quy discloses, transmitting a video signal of one or more individuals at the remote station from a second video camera (Watterson: Fig. 6, el. 92) operatively connected to the remote station (Watterson: the camera is connected to the treadmill machine that is located in the remote station) to the set-top-box (Watterson: Paragraph 0082 and 0114; the user of the treadmill machine can have a video communication with the other users through the set-top-box).

Watterson in view of Quy does not expressly disclose, display the video signal of the individual at the remote station at the television display.

David discloses display the individual in the remote station on the television Display (Fig. 5, el. 88 and Col. 13, lines 39-40).

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made, to modify Watterson in view of QUY sport care monitoring

system in order to display the individual on the TV screen as suggested by David, so the user can view the individual on a bigger screen, since the TV screen is bigger in size than the computer's monitor.

Regarding claim 19, Watterson in view of Quy discloses, coaching the person from the remote station on speaker (Watterson: Paragraph 0077 and 0082; the trainer from his/her treadmill machine can coach the trainee using the speaker that is embedded in each control panel on the treadmill machine).

Watterson in view of Quy does not disclose television display for coaching the person from the remote station and does not disclose that coaching the person based on at least one vital sign.

David discloses television display for coaching the person from the remote station, and that coaching the person based on at least one vital sign (Col. 13, lines 19-20 and 39-40; Col. 14, lines 34-45 and 59-60 and Col. 15, lines 3-8).

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made to modify Watterson in view of Quy system to coach the person from a TV screen based on the vital signals as suggested by David, in order to have the trainer /medical advisor to coach the person, so the trainee will have safer training based on their health condition.

Regarding claim 20, coaching the person from the remote station on speaker based at least in part on the transmitted performance characteristics (Watterson: Paragraph 0077, 0079 and 0082; i.e. the trainer from his/her treadmill machine can

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coach the trainee "using the speaker that is embedded in each control panel on the treadmill machine" and ask the user to increase or decrease the speed of the machine).

Watterson in view of Quy does not disclose television display for coaching the person from the remote station

David discloses a TV display to coach the person from the remote location (Col. 13, lines 19-20 and 39-40; Col. 14, lines 34-45 and 59-60).

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made, to modify Watterson in view of Quy method to include coaching the person from a TV screen as suggested by David, so the trainer can coach the trainee during a live communication through TV transmission in order for the trainee to do better exercise performance.

Regarding claim 21, Watterson in view of Quy discloses, displaying at least one of a performance of another exercising person or a performance characteristic of the another person such that the person can compete with the performance of the another person (Watterson: Paragraph 0078 and 0082; the user can communicate each other during real time communication and can also receive information about the exercise performance and display these info on the control panel display Fig. 9, el. 94 and Paragraph 0087)

Watterson in view of Quy does not disclose, display the performance of another exercising person on a TV screen.

David disclose a TV screen that display a user/users in remote station and data about the user/users (Col. 13, lines 19-20 and 48-54).

Therefore, it would have been obvious to one with ordinary skill in the art to modify Watterson in view of Quay method in order to include a TV to display the performance of the other exercising person as suggested by David, so the user can have the desired information to be displayed on a larger screen, so it will be easier for him/her to monitor.

Regarding claim 21, Watterson in view of Quay discloses, displaying a performance characteristic of the person on the control panel display (Paragraph 0087 and 0090).

Watterson in view of Quay does not disclose a TV display to display the performance characteristic of the person.

David discloses TV display screen to display data about the user (Col. 13, lines 19-20 and 48-54).

Therefore, it would have been obvious to one with ordinary skill in the art, at the time the invention was made to modify Watterson in view of Quay method in order to include a TV screen for display the performance characteristic of the person, so the user will have a bigger screen to display the desired information which will be easier for him/her to monitor.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARIA EL-ZOBI whose telephone number is

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(571)270-3434. The examiner can normally be reached on Monday-Friday (8AM-5 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hai Tran can be reached on 571-272-7305. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. E./

Examiner, Art Unit 4178

01/22/2008

/Hai Tran/

Supervisory Patent Examiner, Art Unit 4178